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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------------|---------------------------|------------------------|
| 10/616,675 | 07/10/2003 | Daniel Charles Birkestrand | ROC920030150US1 | 2590 |
| 46296 7590 02/20/2008 MARTIN & ASSOCIATES, LLC P.O. BOX 548 CARTHAGE, MO 64836-0548 | | | EXAMINER ZHE, MENG YAO | |
| | | | ART UNIT 2195 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/616,675

Applicant(s)

BIRKESTRAND ET AL.

Examiner

MENGYAO ZHE

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5,10,11,19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-5, 10-11, 19, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 4-5, 10-11, 19, 22 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4-5, 10-11, 19, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vega, Patent No. 7,136,800 (hereafter Vega) in view of Circenis et al., Patent Number US 7,146,492B2 (hereafter Circenis).

4. Circenis et al was cited in the last office action.

5. As per claims 4, 19, Vega teaches an apparatus comprising:
at least one processor (Column 4, line 50);
a memory coupled to the at least one processor (Column 4, lines 64-65);
a plurality of logical partitions defined on the apparatus (Column 5, lines 3-7;
each virtual machine corresponds to a logical partition);

a partition manager residing in the memory and executed by the at least one processor, the partition manager managing the plurality of logical partitions, the partition manager comprising:

(A) a minimum resource specification for each of the plurality of logical partitions that specifies minimum resources that must be available for a logical partition corresponding to the minimum resource specification to function correctly (Column 6, lines 1-12);

a minimum resource enforcement mechanism that controls access to the minimum resource specification for each of the plurality of logical partitions by not allowing a sum of all the minimum resource specifications for all of the plurality of logical partitions to exceed a total of resources that are permanently enabled in the apparatus (Column 6, lines 18-33: the capacity policy makes sure that the sum of all minimum resource may not exceed 100% of all available resource.)

Vega does not specifically teach a temporary resource on demand that may be available for each logical partition.

However, Circenis teaches a capacity manager and a resource allocator that manages at least one temporary resource on demand for a specified resource-time, the capacity manager to assure the at least one temporary resource may be recovered when the specified resource-time has expired (Column 6, lines 46-60; Column 7, lines 5-14) for the purpose of giving users the options of having on demand resources, tracking the amount of temporary resources allowed for the user and deactivate those resources when the time is up.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Vega where a minimum resource is available to multiple partitions within a system with permitting each partition with a temporary resource, so that these temporary resource may be managed by a capacity and a resource allocator to assure the at least one temporary resource may be recovered when the specified resource-time has expired, as taught by Circenis, because it gives users the options of having on demand resources, tracking the amount of temporary resources allowed for the user and deactivate those resources when the time is up.

6. As per claims 5, 10, 11, 22, Circenis teaches wherein the partition manager further comprises: an enablement code mechanism that evaluates an enablement code to determine whether the code is valid, wherein the enablement code includes the specified resource- time (Column 12, lines 1-20).

Response to Arguments


7. Applicant's argument filed on 11/26/2007 regarding to claims 4-5, 10-11, 19, 22 have been fully considered, but they are moot in view of the new ground of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MENGYAO ZHE whose telephone number is (571)272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER